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SUBJECT: STATE DROPS CHARGES AGAINST ZUMA

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Summary  
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11. (U) The legal saga surrounding African National Congress (ANC) leader, and future South African President, Jacob Zuma continued on April 6 as the National Prosecuting Authority (NPA) dropped its case against the former Deputy President. Acting NPA Director of Public Prosecution Mokotedi Mpshe concluded that clandestine tapes recently acquired by the NPA through Zuma's legal team shows that the state politically interfered in the legal process to bring charges against Zuma. The NPA charged Zuma with fraud, corruption, money laundering, and racketeering in December 2007, but the state has been investigating allegations surrounding the former Deputy President for nearly 8 years. Mpshe said that given the evidence of the tapes, it is neither "possible nor desirable" for the NPA to pursue the prosecution of Zuma and others. End Summary.

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The State Drops Its Case  
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12. (U) The NPA on April 6 dropped its criminal case against Jacob Zuma. Mpshe announced, "It is with great regret that I cannot see my way clear to assure the nation that there has been no interference in this case." Mpshe read a prepared statement for roughly thirty minutes, describing in detail how the case against Zuma had to be thrown out because "painful facts" have "serious implications for the integrity and independence of the NPA." The "painful facts" included transcripts of clandestinely acquired tapes of conversations between the former Director of the Directorate of Special Operations Leonard McCarthy and former NPA chief Bulelani Ngcuka that Mpshe says demonstrate how the state politically interfered to bring charges against Zuma. The tapes were submitted to the NPA by Zuma's legal team as a way to show how the former Deputy President is the victim of a political conspiracy. Mpshe in his remarks read excerpts from the transcripts and pointed specifically to McCarthy's comments, saying that "his (McCarthy's) conduct ... represents an intolerable abuse and manipulation of the legal process." McCarthy and Ngcuka reportedly are heard on the tapes discussing the timing of when the state would file formal charges against Zuma, questioning to bring charges before or after the ANC's 2007 party congress. (Note: Some legal experts have pointed out that questioning the timing of charges is common practice in many legal situations. End Note.) The two officials also are heard weighing whether or

not charges would benefit former President Thabo Mbeki. However, Mpshe in his remarks did not make any reference to Mbeki and there remains no conclusive evidence of Mbeki's involvement in the case against Zuma. Given the transcripts, Mpshe concluded:

-- The conduct between McCarthy and Ngcuka strains the NPA's sense of "justice and propriety" and makes it unconscionable for the NPA to continue with its prosecution of Zuma.

-- The conduct suggests there was an illegitimate purpose from the state not related to the facts of the case.

-- The conduct makes it neither "possible nor desirable" for the NPA to pursue the prosecution of Zuma and others.

¶3. (U) Mpshe said the NPA would be subject to an independent review of its actions related to the case and he acknowledged that the state had lost credibility because of its role in Qthat the state had lost credibility because of its role in the prosecution. Mpshe did not make any reference to the guilt or innocence of Zuma, nor did he state whether the state had future plans to re-file charges against the ANC leader. In addition, Mpshe gave no indication of whether McCarthy, Ngcuka, or anyone else would be prosecuted for illegal interference and manipulation of the legal process. (Note: There also was no mention of Schabir Shaik, Zuma's business associate, whose conviction in 2005 of bribing Zuma led to his firing as Deputy President. Shaik was released on medical parole last month, and current President Kgalema Motlanthe has recommended that the state look into the decision to release Shaik. However, the dropping of the state's case against Zuma may mean that Shaik never goes back to prison even if his health improves. End Note.)

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¶4. (U) Opposition reaction to Mpshe's statements was swift. Poloffs met with Congress of the People leader Mvume Dandala, Democratic Alliance (DA) leader Helen Zille, and Independent Democrats leader Patricia De Lille, each of whom gave impromptu press interviews outside the NPA's headquarters. Dandala reiterated his belief that Zuma must be prosecuted. De Lille, who in the late 1990s brought to light the arms deal scandal, decried "how many years" and "how much work" had been wasted by Mpshe's decision to drop the charges. Zille pointed to how the NPA, a state agency empowered by the Constitution, has been undermined by both the Mbeki and the Zuma factions of the ANC. She vowed that she was working with the DA's legal team to find a way to ensure Zuma goes to court to account for the charges against him. She promised the DA would file a case "in the very near future." She also decried that political party factions are targeting other factions within the government to the "detriment of the state." (Note: Zille at one point nearly got into a fight with celebrating ANC supporters outside the NPA. She pointed to a sign one of the supporters was carrying with the ANC's slogan of "Working Together We Can Do More." Zille yelled at the supporters that the sign should say either "Working Together We Can Do More Crime" or "Working Together We Can Do More Damage." She had to be restrained by her bodyguards. End Note.) Local press reports speculate that the opposition will work together to file a court case against Zuma.

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Comment  
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¶5. (SBU) This in many ways is one of the saddest days for South Africa even in the face of supposed "Zuma vindication."

It is sad because important questions about the country's elected leaders and their business interests may never be answered in a court of law and it is sad because the tapes of McCarthy and Ngcuka show that both officials tested the bounds of government ethics -- to say nothing of the fact that the National Intelligence Agency reportedly had a role

in taping McCarthy and Ngcuka in the first place. The decision permanently removes any doubt (if any remained) that Zuma will be South Africa's fourth President in two weeks. Yet, the decision also may threaten to taint a Zuma presidency even before it begins. The dropping of charges shows the extent to which state institutions such as the NPA and the Directorate of Special Operations in South Africa have been politicized during the past several years. There already are questions over whether Zuma will keep institutions politicized to serve his agenda. Second, the decision leaves unsaid whether the state will seek prosecution of Zuma, McCarthy, or anyone else in the future. Without knowing who is guilty or not, there may never be punishment for those who benefited from the illicit arms deal and there will always be questions about Mbeki's role in the state's case against Zuma. Third, and most importantly, the decision says nothing about Zuma's guilt or innocence. Not knowing Zuma's guilt or innocence is likely to continue causing the general public to question whether leaders can rise above the rule of law.

LA LIME